

108TH CONGRESS
1ST SESSION

S. 1188

To repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary, to allow for substitution of parties in the case of a claim for benefits provided by the Secretary when the applicant for such benefits dies while the claim is pending, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2003

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary, to allow for substitution of parties in the case of a claim for benefits provided by the Secretary when the applicant for such benefits dies while the claim is pending, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Veterans’ Survivor
3 Benefits Act of 2003”.

4 **SEC. 2. REPEAL OF TWO-YEAR LIMITATION ON PAYMENT**
5 **OF ACCRUED BENEFITS AT DEATH.**

6 Subsection (a) of section 5121 of title 38, United
7 States Code, is amended—

8 (1) in the matter preceding paragraph (1), by
9 striking “for a period not to exceed two years”;

10 (2) in paragraph (4), by striking “and” at the
11 end;

12 (3) by redesignating paragraph (5) as para-
13 graph (6); and

14 (4) by inserting after paragraph (4) the fol-
15 lowing new paragraph (5):

16 “(5) Upon the death of a child claiming bene-
17 fits under chapter 18 of this title, to the surviving
18 parents; and”.

19 **SEC. 3. CONTINUATION OF CLAIM AND SUBSTITUTION OF**
20 **PARTIES UPON DEATH OF APPLICANT FOR**
21 **BENEFITS.**

22 (a) IN GENERAL.—Chapter 51 of title 38, United
23 States Code, is amended by adding at the end the fol-
24 lowing new section:

1 **“§ 5127. Deaths of applicants for benefits: continu-**
 2 **ation of claims and substitution of parties**

3 “(a) In the case of a claim for compensation, depend-
 4 ency and indemnity compensation, or pension that was
 5 submitted to the Secretary by a claimant who dies before
 6 a decision on that claim becomes final in accordance with
 7 section 7291 of this title in which benefits are not payable
 8 based on existing ratings or decisions or those based on
 9 evidence in the file at the date of death under section 5121
 10 of this title, the claim shall not be extinguished if, within
 11 the time period prescribed in subsection (c)(2), an eligible
 12 person submits an application to the Secretary, or submits
 13 a motion to a court with jurisdiction over the claim, to
 14 be substituted as the claimant in order to continue pros-
 15 ecution of the claim. The Secretary or the court, as the
 16 case may be, shall approve any such application submitted
 17 by an eligible person.

18 “(b)(1) For purposes of this section and section 7270
 19 of this title, the term ‘eligible person’ means any of the
 20 following individuals:

21 “(A) The surviving spouse.

22 “(B) The custodian of a surviving child (includ-
 23 ing a surviving child described by section
 24 101(4)(A)(ii) of this title who is incapable of con-
 25 tinuing prosecution of a claim) or, in the case of a

1 surviving child described by section 101(4)(A)(iii) of
2 this title, the surviving child.

3 “(C) A dependent parent.

4 “(D) In the case of a child claiming benefits
5 under chapter 18 of this title, a surviving parent.

6 “(2) In a case where more than one individual re-
7 ferred to in subparagraph (A) through (C) of paragraph
8 (1) submits an application or motion under subsection (a)
9 to be substituted as a claimant, the eligible person shall
10 be determined in the order listed in such subparagraphs.
11 In the case of individuals submitting an application or mo-
12 tion under subsection (a) who are specified in the same
13 subparagraph of paragraph (1), the eligible person shall
14 be the first in time to submit such application or motion.

15 “(c)(1) Upon being notified of the death of a claim-
16 ant, the Secretary shall send a notice to the eligible person
17 shown in the record, or otherwise to the decedent’s last
18 known address, informing that the claim will be dismissed
19 unless an application for substitution as the claimant is
20 received by the Secretary within the time prescribed in
21 paragraph (2).

22 “(2) An application under this section for substi-
23 tution as the claimant on a claim must be filed not later
24 than the later of—

1 “(A) the end of the 1-year period beginning on
2 the date of the claimant’s death;

3 “(B) the end of the 6-month period beginning
4 on the date of the notification under paragraph (1);
5 or

6 “(C) the end of the 3-month period beginning
7 on the date of the notification of an adverse decision
8 under section 5121 of this title.

9 “(d) A person named as a substitute claimant under
10 subsection (a) shall be accorded all the rights and respon-
11 sibilities of the original claimant.

12 “(e) If benefits are payable as a result of a decision
13 on a claim by a substituted claimant named under this
14 section, such benefits shall be paid as follows:

15 “(1) If the deceased claimant was claiming ben-
16 efits as a veteran, to the living person first listed
17 below:

18 “(A) The veteran’s spouse.

19 “(B) The veteran’s children (in equal
20 shares).

21 “(C) The veteran’s dependent parents (in
22 equal shares).

23 “(2) If the deceased claimant was claiming ben-
24 efits as the surviving spouse of a veteran, to the sur-

1 living children of the deceased veteran (in equal
2 shares).

“(3) If the deceased claimant was claiming benefits under chapter 18 of this title as the child of a veteran, to the surviving parents of the child (in equal shares).

7 “(f) Upon the appointment of a substitute claimant,
8 the Secretary shall notify the person substituted as the
9 claimant as to the evidence or information necessary to
10 substantiate the pending claim. If such information or evi-
11 dence is not received within one year from the date of such
12 notification, no benefits may be paid on the claim.

13 “(g) For purposes of section 5112(b) of this title, the
14 term ‘payee’ as used in such section shall be deemed to
15 include a deceased claimant for whom a substitute claim-
16 ant is appointed under this section.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“5127. Deaths of applicants for benefits: continuation of claims and substitution of parties.”.

20 SEC. 4. SUBSTITUTION OF SURVIVOR IN CASES PENDING
21 BEFORE A COURT.

(a) IN GENERAL.—Subchapter II of chapter 72 of title 38, United States Code, is amended by adding at the end the following new section:

1 **“§ 7270. Cases pending on death of claimant: substi-**
2 **tution of parties**

3 “(a) If a claimant dies before filing an appeal under
4 section 7266 of this title, an eligible person may file an
5 appeal as a substituted claimant for the decedent within
6 the time period specified under section 7266 of this title.
7 If an appellant or respondent dies while a claim is pending
8 before a court and before a final decision is rendered
9 under section 7291 of this title, an eligible person may
10 move the court for substitution of claimant in the pending
11 action. Any such motion filed with the United States
12 Court of Appeals for Veterans Claims or to the United
13 States Court of Appeals for the Federal Circuit must be
14 filed within the time period prescribed by sections 7266
15 and 7292 of this title, respectively, or within one year of
16 the claimant’s death, whichever is earlier.

17 “(b) In any case in which a final decision under sec-
18 tion 7291 of this title has not been made, an eligible per-
19 son may move a court to be substituted is the appellant
20 (or respondent as the case may be) for an appellant or
21 respondent who dies while an appeal is pending. The court
22 shall, upon filing of a timely motion, appoint an eligible
23 person to substitute as the claimant to continue prosecu-
24 tion or defense of that claim.

25 “(c) Nothing in this section shall require or authorize
26 substitution for a deceased claimant if a final decision

1 under section 7291 of this title has been entered before
2 the filing of a motion for substitution.

3 “(d) In this section, the term ‘eligible person’ has the
4 meaning given that term in section 5127(b) of this title.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of such subchapter is amended by adding
7 at the end the following new item:

“7270. Cases pending on death of claimant: substitution of parties.”.

8 **SEC. 5. EFFECTIVE DATE.**

9 The amendments made by this Act shall apply to
10 deaths occurring on or after the date of the enactment
11 of this Act.

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